

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| In the Matter of                                 | ) |                      |
|  | ) |                      |
| Assessment and Collection of Regulatory Fees for | ) | MD Docket No. 21-190 |
| Fiscal Year 2021                                 | ) |                      |

**COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

The Information Technology Industry Council (ITI)<sup>1</sup> appreciates the opportunity to submit these comments to the U.S. Federal Communications Commission (FCC or Commission) in response to the Notice of Proposed Rulemaking included in the above-captioned matter.

The Commission’s existing approach to unlicensed spectrum policy has unleashed innumerable innovations that have benefited consumers’ lives and ushered in the digital age, but instituting dramatic changes such as the proposed new fee categories would upend substantial investment and dampen further innovation. While perhaps well intentioned, any proposal to assess regulatory fees on “unlicensed spectrum users,” “large technology companies,”<sup>2</sup> or even more broadly, on those who “benefit from internet infrastructure,”<sup>3</sup> would be so sweeping in scope that it would bring within its grasp nearly every industry across the entire economy. Any efforts to narrow the scope of the proposal would almost certainly fail due to the nearly

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<sup>1</sup> ITI is the premier global advocate for technology, representing the world’s most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries.

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2021*, MD Docket No. 21-190, Report and Order and Notice of Proposed Rulemaking, FCC 21-98, at 38, para. 73 (*Regulatory Fees Order/NPRM*).

<sup>3</sup> Comments of the National Association of Broadcasters, at 13 (rec. June 3, 2021) (NAB Comments).

impossible challenge of precisely defining the category of new payors in a predictable or non-arbitrary way.

Further, the suggestion that “large technology companies” receiving unspecified “advantages”<sup>4</sup> should pay fees completely glosses over the fact that many technology companies already do pay fees if they engage in regulated activities or in order to cover the costs of applicant certifications and the device testing needed to demonstrate compliance with the Commission’s equipment authorization rules. In fact, technology companies invest significant resources into infrastructure and services that create even more demand for access to broadband and communications networks.

Due to the myriad problems created by this or similar proposals, the Commission should firmly reject the notion of assessing regulatory fees on unlicensed spectrum users or entities that are not engaging in regulated activities.

## **I. THE PROPOSAL WOULD DAMPEN INNOVATION AND HARM EFFORTS TO CLOSE THE DIGITAL DIVIDE**

Unlicensed spectrum use has unlocked innovation and economic benefits at a staggering scale, with some estimates of the global value of Wi-Fi alone reaching well beyond \$3 trillion in 2021.<sup>5</sup> The economic benefits of unlicensed spectrum use and the related strides in innovation over recent decades extend well beyond traditional access points and client devices that provide Internet connectivity, though providing more equitable and far reaching access to the Internet has been a significant outcome as well. Some of the other well-known examples of innovation include a vast range of consumer electronics, Bluetooth connectivity, the Internet of Things (IoT)

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<sup>4</sup> *Regulatory Fees Order/NPRM* at 38, para. 73.

<sup>5</sup> Wi-Fi Alliance, Global Economic Value of Wi-Fi – 2021-2025 at 1 (2021), [https://www.wi-fi.org/download.php?file=/sites/default/files/private/Global\\_Economic\\_Value\\_of\\_Wi-Fi\\_2021-2025\\_202109.pdf](https://www.wi-fi.org/download.php?file=/sites/default/files/private/Global_Economic_Value_of_Wi-Fi_2021-2025_202109.pdf).

and Industrial IoT (IIoT), precision agriculture operations, telemedicine applications, smart homes, and smart cities. These technologies and applications have contributed to creating the digital economy as we know it the world over, and they have profoundly improved the quality of life for billions of people, effectively touching virtually every industry and every household.

One tradeoff for unlicensed spectrum-based innovation is that developers have a relatively low barrier to entry in exchange for possessing no protection from harmful interference and no right to exclude others from a band. Licensees receive exclusive rights to use certain frequencies, or the benefit of FCC rules that exclude other technologies from a band. Unlicensed users do not—they must accept all interference and cause none and must share their bands with users using a variety of technologies. Notably, unlicensed frequencies are treated within the footnotes of the FCC’s Table of Frequency Allocations.<sup>6</sup> As such, the Office of Engineering and Technology (OET) acts largely to protect the rights of licensees in proceedings concerning unlicensed bands.<sup>7</sup> In proceedings that relate to unlicensed spectrum bands, the primary claims that OET must adjudicate center around ensuring that unlicensed operations do not cause harmful interference to existing licensees.

Moreover, the relatively low barrier to entry for users of unlicensed spectrum, which is not without costs as noted below, has allowed any developer with a great idea to try its hand at new innovations without regard for the sophisticated processes needed to obtain FCC licenses. The resulting range of potential users who benefit from the process is broad, including consumers, schools, and libraries, along with the full swath of businesses in the supply chain from chipmakers to other manufacturers, application creators, and content producers. Some have even found ways to increase access to the Internet via wireless services that utilize unlicensed

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<sup>6</sup> 47 CFR § 2.106.

<sup>7</sup> See *Regulatory Fees Order/NPRM* at 13, para. 24, n.65.

spectrum bands, which helps to close the digital divide in unserved and underserved communities. For example, providers can extend networks beyond urban and suburban areas into unserved rural areas, or they may provide a form of competition and additional access opportunities in underserved neighborhoods. As a matter of policy, the Commission should continue encouraging these types of innovative activities, not shift to burdening already price-sensitive markets with additional fees and regulation.

For all these reasons, the FCC’s current system of addressing unlicensed spectrum use has worked incredibly well over the past few decades to spur innovation and usher in the digital era. This system, with its low barriers to entry, helps ensure that consumers have access to an array of innovative products and services because many devices use unlicensed spectrum precisely to keep costs low for business and consumer users. Injecting new fees into this process would disrupt the marketplace and dampen innovation. NAB’s proposal would fundamentally, and unjustifiably, upend the innovative, iterative process that has directly contributed to helping close the digital divide and improving standards of living around the world.

## **II. THE PROPOSAL IS OVERLY BROAD AND CANNOT BE NARROWED IN A NON-ARBITRARY WAY**

By proposing to assess regulatory fees on “unlicensed users,” technology companies, and users of “internet infrastructure,”<sup>8</sup> NAB is, in effect, suggesting taxing individual consumers, businesses with Wi-Fi access points, and perhaps even government entities such as schools and libraries. Identifying a single consumer, business, or government entity that does *not* use equipment connected through unlicensed spectrum frequencies or that does not otherwise benefit from Internet infrastructure would be a nearly impossible task. It is difficult to overstate the

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<sup>8</sup> NAB Comments at 13.

impracticability of assessing and then collecting fees from this broad range of new payors. But, on the other hand, narrowing the meaning of “Big Tech companies” or “unlicensed spectrum users”<sup>9</sup> in a meaningful way to make the assessment and collection of fees possible would entail arbitrary, and potentially discriminatory, decisions about who pays and who does not.

Would the Commission base fee assessments on thresholds tied to revenues or types of services offered? Would any industry carveouts be included, given that every industry from traditional communications and video service providers to healthcare, financial services, agriculture, and many more use these technologies in their operations? The Commission would also have great difficulty in assessing fees on individuals and retailers, which have their own unique positions within the supply chain and are generally outside the jurisdiction of the Commission.

Further, many devices operate on both licensed and unlicensed frequencies, but NAB’s proposal makes no mention of “hybrid” devices or manufacturers of exclusively licensed-spectrum radio equipment and whether they would also be subject to new fees. The Commission expressly recognizes the inherent difficulty in distinguishing between such devices, and it notes the difficulty, if not impossibility, of using the equipment authorization process to do so.<sup>10</sup> Introducing a legal theory to distinguish between manufacturers of unlicensed-spectrum equipment and other radiofrequency devices would likely fail to hold up, if not on the question of arbitrariness alone, then on these practical grounds as well.

There are simply too many questions inherent to the NAB proposal for the Commission to even begin the process of narrowing the overly broad range of potential regulatees in a non-arbitrary way.

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<sup>9</sup> NAB Comments at 13-14.

<sup>10</sup> *Regulatory Fees Order/NPRM* at 13, para. 24, n.68.

### III. THE PROPOSAL DOES NOT ACCOUNT FOR EXISTING FEES AND COSTS

NAB's proposal incorrectly states that large technology companies "pay *absolutely nothing* in regulatory fees" and "free ride" on the Commission's work.<sup>11</sup> This language is echoed in the text of the *Regulatory Fees Order/NPRM*, where the question is posed whether "advantages" from universal service and other Commission activities would warrant assessment of fees,<sup>12</sup> implying that certain perceived benefits are unpaid for or otherwise unfair. However, the simple answer is no, additional fees are not warranted because neither characterization is accurate, and neither would support taking further action. Equipment manufacturers and other users of unlicensed spectrum already expend significant sums in ways that defray Commission costs. For example, often manufacturers choose to use the certification process for devices that could utilize the Supplier Declaration of Conformity (SDoC) process in order to produce testing reports that can then be used in global markets. In such cases, the application filing fees and testing costs are often substantial, and they reduce OET costs, as the Commission itself notes in the *Regulatory Fees Order/NPRM*.<sup>13</sup>

Moreover, many large technology companies already pay significant regulatory fees for regulated activities related to subsea cables and calling platforms, among others. Technology companies also invest substantial sums directly into building telecommunications and other infrastructure, whether data centers, subsea cables, backhaul and middle mile networks, and content delivery networks to cache content closer to consumers. All of this infrastructure supports delivery of online content to and from last mile networks and helps to drive demand for FCC-regulated communications services.

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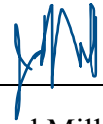
<sup>11</sup> NAB Comments at 13 (emphasis in original).

<sup>12</sup> *Regulatory Fees Order/NPRM* at 38, para. 73.

<sup>13</sup> *See id.* at 13, para. 24, n.66.

For all these reasons, the notion of assessing Commission regulatory fees based on indirect and broadly shared benefits from unlicensed spectrum should be dismissed out of hand.

Respectfully submitted,

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